



Patitioner's Docket No. ROWL-9955

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: McClain et al.

Serial No.: 09/578,001

Group No.: 1755

Filed: May 24, 2000

Examiner: Elizabeth D. Wood

For: METHOD AND APPARATUS FOR PRODUCING AN AQUEOUS PAINT COMPOSITION FROM A PLURALITY OF PREMIXED COMPOSITIONS

Date of mailing "Notice of Allowance and

Base Issue Fee Due" July 28, 2003

Batch No. _____

RECEIVED
OCT 16 2003
TC 1700

Mail Stop 313(c)

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

10/10/2003 HROCHA1 00000033 09570000

01 FC:1460

130.00 OP

NOTE: Petitions to withdraw patent applications from issue (37 C.F.R. 1.313, M.P.E.P. § 1308) are decided by the Deputy Assistant Commissioner of Patents. M.P.E.P. § 1002(b). Letters requesting that the application be withdrawn from issue for purposes of interference with a patent (see M.P.E.P. § 1101.02(f) require the approval of the Group Director. M.P.E.P. § 1003.

WARNING: Papers requesting that an application be withdrawn from issue after the issue fee is paid, and any papers associated with the petition, including papers necessary for filing a continuing application, may be addressed as above or be hand-carried to the Office of Petitions, at Two Crystal Park, Suite 913, April 14, 1993, 1150 T.M.O.G. 27-28.

PETITION FOR WITHDRAWAL FROM ISSUE (37 C.F.R. 1.313)

PETITION

1. Applicant hereby petitions for the immediate withdrawal of this application from issue under either 37 C.F.R. 1.313(c).

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

X deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, Alexandria, VA 22313.

FACSIMILE

☐ transmitted by facsimile to the Patent and Trademark Office.

Date: October 7, 2003

Signature

Heather Clark

Heather Clark

(type or print name of person certifying)

PATENT ISSUE FEE

2. The issue fee for this case

(complete (a) or (b))

- (a) ☐ has NOT been paid, but is due for payment on _____.
- (b) ☒ has been paid on August 8, 2003.

(complete the following, if known)

This application is scheduled to

- ☐ issue on _____
- ☐ as patent _____.

NOTE: "While the specific time period varies, an allowed application generally receives a patent number and issue date within two weeks after the issue fee is received in the Patent and Trademark Office." M.P.E.P. 1308.

REASON(S) FOR WITHDRAWAL REQUEST

NOTE: "When the issue fee has been paid, the application will not be withdrawn from issue for any reason except: (1) A mistake on the part of the Office; (2) A violation of § 1.56, or illegality in the application; (3) Unpatentability of one or more claims; or (4) For interference." 37 C.F.R. 1.313(b).

3. The reason for the request for withdrawal from issue is:

(check applicable item(s) below)

- (a) ☐ there has been a mistake on the part of the Office.
- (b) ☐ there has been a violation of Section 1.56, or illegality in the application.
- (c) ☐ one or more of the claims are unpatentable.
- (d) ☒ for purposes of declaring an interference.
- (e) ☐ other.

Further details as to the reason(s) for this withdrawal request are set forth on the attached 1 sheet(s).

PETITION FEES

NOTE: The fee need only be paid, if the reason for withdrawal is not the fault of the Office. 37 C.F.R. 1.313(a).

4. The petition fee (37 C.F.R. 1.17(i)) is paid as follows:

☒ Enclosed is a check in the sum of \$130.00.

☐ Charge Account 19-0513 the sum of \$130.00.

A duplicate of this petition is attached.


Signature of Practitioner

Reg. No.: 42,342

Kenneth C. Booth
(type or print name of practitioner)

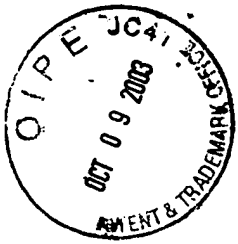
Tel. No.: (480) 655-0073

18 E. University Drive, Suite 101

Customer No.: ROWL-9955

Mesa, Arizona 85201-5946

Plus 1 Added Page



PETITION FOR WITHDRAWAL FROM ISSUE (37 C.F.R. 1.313)

ADDED PAGE FOR REASON(S)

RECEIVED
OCT 16 2003
TC 1700

Applicants request immediate withdrawal of the present application from issue under 37 C.F.R. 1.313(c) even though the issue fee has been paid because Applicants were not aware that an interference should have been provoked with interfering claims. Due to information, noted below, that has recently come to Applicants' attention, withdrawal of the present application from issue by the Patent Office under the initiative of the Applicants is hereby requested.

1. Applicant became aware of U.S. Patent No. 6,531,537 B2 having claims to the same invention as the present application.

A. The patent was issued March 11, 2003 (less than a year ago as required by 35 USC 135(a))

B. The present application was filed on May 24, 2000, before the pre-grant publication of the patent, which occurred on January 10, 2002. (Thus, the requirements of 35 USC 135(b) do not pertain to this application.)

C. Unless an Interference is provoked between the present application, with its May 24, 2000 filing date, and the issued claims of U.S. Patent No. 6,531,537 B2, Applicants will be significantly limited in their ability to provoke an interference with that patent because 35 USC 135(b) will impose significant restrictions on the claims that can be made in any other related application.

2. The issued claims in the patent could have been claimed in the present application.

A. Although Applicants have an earlier priority date by more than 1 year for the subject matter claimed by Patent No. 6,531,537 B2, the claims of the patent provide rights in that invention to another. Applicants' disclosure, though it uses slightly different language, discloses the same examples for its components and those in the issued patent.

3. There are no other related application(s) in which the patent claims could be presented without changing the thrust of those related applications. Furthermore, Applicants may be restricted from presentation of claims having the same or substantially the same subject matter in any related application under 35 USC 135(b) because all such related applications were filed or will be filed after the publication date of the patent. Alternatively stated, the present application is the only application that can avoid the requirement of 35 USC 135(b) by virtue of its filing date. In view of the nature and scope of the patent claims having an effective filing date more than one year after the effective filing date of the same subject matter in Applicants' application, Applicants need to provoke an interference in the present application with its 5/24/00 filing date.

Hence, Applicants hereby petition the commissioner to withdraw the present application from issue.

(use additional pages, if necessary)

Added Page 1